

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

GREATER ST. LOUIS CONSTRUCTION)
LABORERS WELFARE FUND, et al.,)

Plaintiffs,)

vs.)

RACKLEY BUILDING GROUP, LLC,)

Defendant.)

Case No. 4:11CV01790 ERW

MEMORANDUM AND ORDER

This matter comes before the Court on Plaintiffs' Motion for Contempt [ECF No. 12] and the Court's Order to Show Cause and Setting of Contempt Hearing [ECF No. 14].

I. BACKGROUND FACTS

On April 4, 2012, Clerk's Default was entered against Defendant Rackley Building Group, LLC, for failure to Answer or otherwise respond to Plaintiffs' Complaint. On April 9, 2012, this Court issued an Order Compelling Accounting, ordering Defendant to submit to a financial examination for determination of amount owed to Plaintiffs. Defendant was ordered to provide to Plaintiffs within thirty (30) days, all of its books, ledgers, payroll records, cash disbursement ledgers, bank statements and other documents reflecting or pertaining to all hours worked by and wages paid to Defendant's employees since July 14, 2010. As of this date, Defendant has failed to comply with all Orders of this Court.

Plaintiffs filed their Motion for Contempt on June 5, 2012, asking this Court for an Order holding Defendant in civil contempt of court for its failure to comply with the April 9, 2012 Order Compelling Accounting. In support of their Motion, Plaintiffs submitted the Affidavit of Janine M. Martin, who attested that she had mailed a copy of the Order Compelling Accounting

to Cardin Rackley, principal of Defendant, by letter dated April 10, 2012. Ms. Martin further attested that Defendant had not complied with the Order and had not initiated contact with Plaintiffs to discuss compliance.

On June 7, 2012, this Court entered its Order to Show Cause and Setting of Contempt Hearing, requiring the presence of Plaintiff's counsel and Defendant at a hearing to be held on June 20, 2012, at 3:30 p.m. The Court further ordered Cardin Rackley, as registered agent for Defendant, to appear before the Court on that date and show cause why he should not be held in Contempt of Court for failure to comply with Orders of this Court directing him to produce the necessary documents to complete the audit in this matter.

Neither Cardin Rackley nor any legal representative for Defendant appeared at the June 20 hearing. Defendant has not submitted to a financial examination or produced the documents as ordered.

II. MOTION FOR CONTEMPT

Federal Rule of Civil Procedure 37(b)(2)(A) provides that “[i]f a party or a party’s officer, director, or managing agent – or a witness designated under Rule 30(b)(6) or 31(a)(4) fails to obey an order to provide or permit discovery, including an order under Rule 26(f), 35, or 37(a), the court where the action is pending may issue further just orders.” The sanctions permitted by the rule include “treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.” Fed. R. Civ. P. 37(b)(2)(A)(vii). An order of contempt may be entered after the Court enters an order compelling discovery. *Schleper v. Ford Motor Co., Auto. Div.*, 585 F.2d 1367, 1371 (8th Cir. 1978).

This Court has provided the Defendant several opportunities to respond to its Order Compelling Accounting, but it has failed to do so. Moreover, Defendant and its registered agent, Cardin Rackley, failed to appear at the June 20 hearing. Defendant and its registered agent

Cardin Rackley have acted in clear violation of this Court's Orders, and thus, the Court finds Defendant and its registered agent Cardin Rackley in Civil Contempt of Court, pursuant to the Court's authority under Federal Rule of Civil Procedure 37(b).

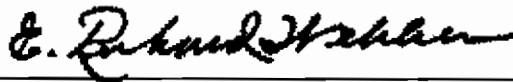
Accordingly,

IT IS HEREBY ORDERED that Defendant and its registered agent Cardin Rackley are found in Civil Contempt of this Court. Defendant and its registered agent Cardin Rackley are hereby fined \$200.00 daily, beginning this date, and continuing until contempt is purged. Defendant may purge itself of this contempt by producing the records and submitting to all terms of the April 9, 2012 Order Compelling Accounting within ten (10) days of this Order. A copy of that Order [ECF No. 10] is appended. Defendant's registered agent Cardin Rackley is ordered to be in this Courtroom at 11:45 a.m. on July 24, 2012 for the purpose of demonstrating his full compliance with the April 9, 2012 Order.

IT IS FURTHER ORDERED that if Defendant's registered agent Cardin Rackley fails to produce the records and submit to all terms of the April 9, 2012 Order within ten (10) days of this Order, the Court will enter an order requiring that his body be seized by the United States Marshals Service and that he remain incarcerated until further order of this Court.

IT IS FURTHER ORDERED that the Clerk of the Court shall mail a copy of this Order by regular and certified mail, return receipt requested, to Cardin Rackley, Registered Agent, Rackley Building Group LLC, 5949 Washington Blvd., Apartment 1 West, St. Louis, Missouri 63146.

Dated this 6th day of July, 2012.



E. RICHARD WEBBER
SENIOR UNITED STATES DISTRICT JUDGE

8282 ET42 2000 05TT TT02

OFFICE OF THE CLERK
UNITED STATES DISTRICT COURT
Eastern District of Missouri
111 S. Tenth Street
St. Louis, Missouri 63102



Hasler

07/09/2012

US POSTAGE

\$05.75

FIRST CLASS MAIL



OFFICIAL BUSINESS

Cardin Rackley, Registered Agent
Rackley Building Group LLC
5949 Washington Blvd.
Apartment 1 West
St. Louis, Missouri 63146

NIXIE

631 DC 1 00 07/16/12

RETURN TO SENDER

UNCLAIMED

UNABLE TO FORWARD

BC: 65102112599 10416-00438-00-02



| SENDER: COMPLETE THIS SECTION | | COMPLETE THIS SECTION ON DELIVERY | |
|---|--|--|--|
| <p>■ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.</p> <p>■ Print your name and address on the reverse so that we can return the card to you.</p> <p>■ Attach this card to the back of the mailpiece, or on the front if space permits.</p> | | <p>A. Signature <input type="checkbox"/> Agent <input type="checkbox"/> Addressee</p> <p>X</p> | |
| <p>1. Article Addressed to:</p> <p>Carlin Lackley, Reg. Agent Lackley Bldg Group LLC 5949 Washington Blvd Apt 1 West St Louis MO 63140</p> | | <p>B. Received by (Printed Name) C. Date of Delivery</p> | |
| <p>D. Is delivery address different from item 1? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If YES, enter delivery address below:</p> | | <p>3. Service Type</p> <p><input checked="" type="checkbox"/> Certified Mail <input type="checkbox"/> Express Mail</p> <p><input type="checkbox"/> Registered <input type="checkbox"/> Return Receipt for Merchandise</p> <p><input type="checkbox"/> Insured Mail <input type="checkbox"/> C.O.D.</p> | |
| <p>2. Article Number (Transfer from service label)</p> <p>7011 1150 0002 2413 7328</p> | | <p>4. Restricted Delivery? (Extra Fee) <input type="checkbox"/> Yes</p> | |
| <p>5. Return Receipt</p> | | <p>102595-02-M-1540</p> | |